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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/525,842	03/15/2000	Kenneth A. Mikkelsen	2946	9234

7590 05/08/2002

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EXAMINER

BARRY, CHESTER T

ART UNIT	PAPER NUMBER
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1724

12

DATE MAILED: 05/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/525,842

Applicant(s)

MIKKELSON ET AL.

Examiner

Chester T. Barry

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A9-12

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

It is noted that applicant's supplementary paper filed in response to the notice of non-compliance ("Submission" filed 1/28/02) did not repeat the "Remarks" of the non-compliant paper filed 11/14/01. Insofar as non-compliant papers are ordinarily non-entered, technically the remarks are not of record. In this case, however, the examiner has entered-in-part the non-compliant paper so that the Remarks section thereof are not left off the record. Applicant is encouraged in the future to repeat all portions of a non-compliant paper in the curing submission so that no portion is inadvertently omitted from the record.

All objections noted in the 8/24/01 action are withdrawn in light of applicant's response of 1/28/02 (received at PTO on 2/13/02).

All §103 rejections noted in the 8/24/01 action are repeated and maintained. Applicant's arguments are treated below:

Applicant attempts to distinguish the invention from Tsumura arguing (at p. 6 of Remarks filed 11/14/01) that the invention does not require the use of gravitational sedimentation for liquid solid separation. With this point, the examiner agrees. That's way the rejection was under §103 and not under §102. Applicant fails to assert any reversible error in the examiner's conclusion that the invention would have been obvious in view of Tsumura and Burke *in combination*.

Applicant argues that Tsumura and the invention are different in that Tsumura bases process control on DO and ORP readings whereas the invention is limited only durationally. In this regard, the examiner responds that the claimed invention does not distinguish over Tsumura at least because the claims do not recite a "predetermined

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time" or "period of predetermined duration." This remarks also addresses Applicant's remarks pertaining to claim 2 – 4, to wit, that the invention regulates process steps "strictly as a function of time." This feature does not limit the claims since it is not recited therein.

Claim 7 is rejected under §112, 2nd paragraph, as failing to particularly point out and distinctly claim the invention. Claim 7 recite an SBR reactor. The application refers to "conventional" SBR reactors in the prior art. Reading the term "sequencing batch reactor" as broadly as reasonable while in a manner not inconsistent with the specification, it would appear that the term "sequencing batch reactor" would include within its scope both "conventional [SBR]" and "unconventional [SBR]." Insofar as applicant distinguishes the invention from "conventional" SBR processes, it is unclear what is being claimed, and whether claim 7 is even within the scope of what applicant believes his invention to be.

Claim 7 is rejected under 35 USC 103 over the admitted prior art in view of Burge. Applicant admits SBR processes meeting virtually all claimed limitations were known. The sole difference between the claimed process and the prior art appears to be the substitution of a membrane filter for a gravity-based sedimentation / clarification step. This difference is suggested by Burke, as noted above.

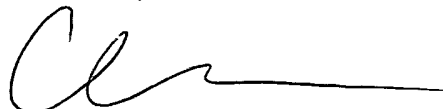
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chester T. Barry whose telephone number is 703-306-5921. The examiner can normally be reached on M, T, R, F 9 - 3 PM, W 9 - 1 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Simmons can be reached on 703-308-1972. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Chester T. Barry
Primary Examiner
Art Unit 1724

May 6, 2002